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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,572	05/01/2002	Louis V. Pinkham	PINKHAM-767RE	3869

7590 07/29/2008
Menotti J. Lombardi, Esq.
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10 Mountainview Road
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EXAMINER

RIVELL, JOHN A

ART UNIT	PAPER NUMBER
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3753

MAIL DATE	DELIVERY MODE
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07/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/930,572	Applicant(s) PINKHAM, LOUIS V.	
	Examiner JOHN RIVELL	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/12/07 (req for recon.).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's arguments filed October 12, 2007 have been fully considered but they are not persuasive. Claims 1-20 remain pending.

Applicant is advised that the Notice of Allowance previously mailed has been vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

35 U.S.C. 251 Reissue of defective patents.

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue. The Director may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents. The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent. (Amended Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

§ 1.173 Reissue specification, drawings, and amendments.

(a) Contents of a reissue application . An application for reissue must contain the entire specification, including the claims, and the drawings of the patent. No new matter shall be introduced into the application. No reissue patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent, pursuant to 35 U.S.C. 251.

Claims 1-20 are rejected under 35 U.S.C. 251 as the amendment to the application introduces new matter to the application.

Specifically, the amendment to the specification at column 4, the paragraph starting at line 44, the change in the specification from "... approximately 22° (specifically 22.21°)" to -- approximately 30° -- is considered to be new matter on the basis of a lack of a proper "incorporation by reference" in the application that matured into U. S. Pat. No. 6,112,767.

For applications filed on or after September 21, 2004, a claim under 35 U.S.C. 120 and 37 CFR 1.78 for benefit of a prior-filed nonprovisional application or international application designating the U.S. that was present on the filing date of the continuation or divisional application is considered an incorporation by reference of the prior-filed application as to inadvertently omitted material, subject to the conditions and requirements of 37 CFR 1.57(a). The purpose of 37 CFR 1.57(a) is to provide a safeguard for applicants when all or a portion of the specification and/or drawing(s) is (are) inadvertently omitted from an application.

For applications filed prior to September 21, 2004, like the application that matured into Pat. No. 6,112,767, in order to incorporate inadvertently omitted subject matter a proper "incorporation by reference" is necessary in the application as filed.

On review of the application that matured into the '767 patent, which was filed prior to September 21 2004, there is found no proper "incorporation by reference" of the parental application. Accordingly, as there is no proper "incorporation by reference" to the parent application, and that the application that matured into the '767 patent has no basis, as originally filed, for disclosure and claim language to "30 °(degrees)", this

change in the disclosure as now proposed in this reissue application is considered to be new matter. See M.P.E.P. §201.06(c) IV INCORPORATION BY REFERENCE.

In response to applicants arguments filed October 12, 2007, noting that the transmittal letter originally filed May 15, 1999, included as a matter of form an “incorporation by reference” section that is in fact marked by applicant, in 1999, the statement in the transmittal letter was only for the purposes of solving the problem of a continuation application being filed with a page missing from it. If you actually needed disclosure from the parent application to support a claim in the child, an incorporation by reference statement had to have been added in the specification. Since this incorporation by reference was in fact not added to the specification, there is no proper “incorporation by reference”.

Additionally, it is noted that the application which matured into Pat, No. 6,112,767 was originally filed as a “continuation” under rule 60 application. 37 CFR 1.60 requires that the specification “must” be the same. As the specification, as originally filed, was not the same the parental status of this application should be changed to the proper “continuation-in-part” status.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Rivell whose telephone number is (571) 272-4918. The examiner can normally be reached on Mon.-Fri. from 6:30am-3:00pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/John Rivell/
John Rivell
Primary Examiner
Art Unit 3753**

j.r.